

1 MORRIS PETERSON
Steve Morris, Bar No. 1543
2 Email: sm@morrislawgroup.com
Jean-Paul Hendricks, Bar No. 10079
3 Email: jph@morrislawgroup.com
4 900 Bank of America Plaza
300 South Fourth Street
5 Las Vegas, Nevada 89101
Telephone: (702) 474-9400
6 Facsimile: (702) 474-9422

7 Attorneys for Defendants
Caesars Palace Corporation and
8 Caesars Palace Realty Corporation

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 PHASE II CHIN, LLC and LOVE &) CASE NO. 2:08-cv-162-JCM-GWF
12 MONEY, LLC, (formerly dba)
13 O.P.M.L.V., LLC,)

14 Plaintiffs,)

15 vs.)

16 FORUM SHOPS, LLC, FORUM)
DEVELOPERS LIMITED)
17 PARTNERSHIP, SIMON PROPERTY)
GROUP LIMITED PARTNERSHIP,)
18 SIMON PROPERTY GROUP, INC.,)
CAESARS PALACE CORP., and)
19 CAESARS PALACE REALTY CORP.,)

20 Defendants.)
21

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

22 The parties in this matter having appeared for a trial to the court
23 beginning on March 28, 2011, and having presented documentary evidence and
24 testimony of witnesses in this matter, the court hereby finds as follows:

25 **FINDINGS OF FACT**

26 1. In 1990, defendants Caesars Palace Realty Corp., as lessor, and Forum
27 Developers Limited Partnership ("Forum developers"), as lessee, entered into a
28

1 ground lease on the property underlying the high-end retail mall now known as
2 The Forum Shops at Caesar's Palace ("The Forum Shops").

3 2. On February 7, 2003 Caesars Palace Realty Corporation and Forum
4 developers entered into a second amended and restated ground lease (the "ground
5 lease"). The ground lease governs the rights and responsibilities of Caesars¹ and
6 Forum² at all times relevant to this action. Although the management agreement
7 and the Chinois sublease are "subject to" the ground lease, neither plaintiff is or has
8 ever been a party to the ground lease.

9 3. On March 18, 1997, Forum developers entered into a lease (the "lease")
10 with GGH Restaurant, LLC ("GGH") of premises in The Forum Shops to be used
11 for the operation of a restaurant (the "premises"). Plaintiff Phase II Chin, LLC
12 ("Chinois") succeeded to GGH's rights and obligations under the lease and, until
13 July 2009, operated a restaurant on the premises known as "Chinois."

14 4. On June 20, 2002 Chinois entered into an agreement with plaintiff
15 O.P.M.L.V., LLC³ ("OPM/Poetry") granting OPM/Poetry the right to use a portion
16 of the premises -- approximately 10,000 square feet on the second floor of the
17 premises -- as an after-hours club to be operated Wednesday through Sunday from
18 10:00 p.m. to 6:00 a.m. the following day (the "Club"). OPM/Poetry did not
19 pay any money directly to defendants to operate in The Forum Shops Mall, it paid
20 rent only to Chinois.

21
22
23 ¹ There are two "Caesars" entities named as defendants in this action: Caesars
24 Palace Corp. and Caesars Palace Realty Corp. They are collectively referred to herein as
25 the "Caesars defendants," "Caesars Palace" or simply "Caesars."

26 ² There are four "Forum" entities named as defendants in this action: Forum
27 Shops, LLC, Forum Developers Limited Partnership, Simon Property Group Limited
28 Partnership and Simon Property Group, Inc. They are collectively referred to herein as
the "Forum defendants," "Forum Shops" or simply "Forum."

³ In September 2007, O.P.M.L.V., LLC changed its name to Love & Money, LLC.

1 5. At no time did Chinois request that Forum approve a sublease
2 between Chinois and OPM/Poetry.

3 6. At no time did Forum approve a sublease between Chinois and
4 OPM/Poetry.

5 7. None of the defendants had any contractual relationship with
6 OPM/Poetry which operated the club.

7 8. OPM/Poetry began operations on May 22, 2003 as a dance nightclub.
8 It ceased operations on July 26, 2009. During all times pertinent to this case,
9 OPM/Poetry was known and advertised itself as a "hip-hop" club that presented
10 rap and "gangsta-rap" music along with other musical fare, such as rhythm and
11 blues.

12 9. On October 9, 2003, Forum developers and Chinois executed an
13 amendment to the lease (the "lease amendment") expanding Chinois' right to use
14 the premises for the operation of "an after-hours club, with the sale of food and
15 alcoholic beverages for on-premises consumption, along with live and/or
16 pre-programmed music."

17 10. Generally, the OPM/Poetry club was open every Thursday through
18 Sunday night from 10:00 p.m. to 4:00 - 6:00 a.m., depending on business.

19 11. OPM/Poetry began operations as a well run nightclub. However,
20 that changed when defendants began to experience security incidents attributable
21 to patrons of OPM/Poetry.

22 12. From on or about the time OPM/Poetry opened until the Caesars
23 defendants began closing the fire door separating Caesars Palace from The Forum
24 Shops Mall on August 17, 2007 (known as the "Won door"), the Caesars defendants
25 experienced an increasing number of incidents that threatened the physical
26 security and well-being of Caesars' guests and employees, such as violent
27 altercations, guest and employee complaints of violent or threatening behavior in
28 its casino area immediately adjacent to The Forum Shops Mall (the "forum casino"),

1 and in its guest parking facility. Investigations by Caesars security personnel
2 revealed that these security incidents were attributable to unruly people going to
3 or coming from OPM/Poetry.

4 13. On June 22, 2005, then Clark County Sheriff Bill Young wrote a letter
5 to the Nevada Gaming Control Board urging the board to hold gaming licensees
6 responsible for any violence related to gangster-rap entertainment in nightclubs
7 operated on property owned by a licensee.

8 14. On February 7, 2006 the Nevada Gaming Control Board issued a
9 directive to all of its gaming licensees, including Caesars Palace, stating "the board
10 will hold the licensee accountable for any regulatory violations that occur within or
11 outside a nightclub located on the property of the licensee." Of particular concern
12 to the board, among other things, were incidences of violence and excessive
13 inebriation associated with nightclubs.

14 15. Caesars Palace executives were informed by the Gaming Control
15 Board in connection with the February 7, 2007 letter that they would be responsible
16 for violence emanating from Pure nightclub, located inside Caesars Palace and
17 OPM/Poetry nightclub, located in The Forum Shops on property leased to Forum
18 by Caesars.

19 16. Café Dela Spiga is a coffee shop and bar located outside but near to
20 OPM/Poetry, inside The Forum Shops on property controlled by Caesars.
21 Although Café Dela Spiga is inside The Forum Shops, it is a lessee of Caesars
22 Palace.

23 17. Because of the efforts of the Caesars defendants, Café Dela Spiga
24 ceased serving alcoholic beverages and began closing at or near midnight
25 beginning on or about March 10, 2007.

26 18. Café Dela Spiga was not the cause of violent incidents inside The
27 Forum Shops, Caesars Palace forum casino, or in the guest parking structure
28 because those violent incidents continued unabated after March 10, 2007.

1 19. A gang-related shooting occurred on August 4, 2007 inside Caesars
2 Palace near the guest parking structure elevators at the rear of the forum casino.
3 The perpetrator of that shooting entered Caesars from The Forum Shops Mall after
4 patronizing or attempting to patronize OPM/Poetry. At the time the shooter
5 exited from The Forum Shops premises, OPM/Poetry was the only business open
6 in the mall.

7 20. In response to the shooting and other violent breaches of the peace,
8 the Caesars defendants closed the Won door after regular Forum Shops business
9 hours, beginning on Friday August 17, 2007 and with the exceptions of the
10 weekends beginning Friday October 19, 2007, when extra security was provided
11 by OPM/Poetry, and Friday December 21, 2007, when the door malfunctioned,
12 Caesars closed the Won door on weekend nights after 1:00 a.m. from August 17,
13 2007 until OPM/Poetry closed on July 26, 2009. The Won door continues to be
14 closed after The Forum Shops Mall regular business hours on weekends through
15 today.

16 21. Caesars Palace closed the Won door because it was concerned about
17 physical violence and other employee and guest-threatening security incidents
18 occurring in The Forum Shops Mall, the forum casino, and the Caesars guest
19 parking structure that were attributable to people going to or coming from
20 OPM/Poetry nightclub. Caesars was also concerned about "Gangsta' Rap" as
21 stated in the February 7, 2007 Gaming Control Board letter to all Nevada licensees.

22 22. The Caesars Defendants offered to, and on October 19, 2007, in fact
23 did, keep the Won door open after hours because OPM/Poetry agreed to pay for
24 the necessary additional security to do so.

25 23. There is no credible evidence that the defendants' actions were
26 motivated by racism, racial animosity, or bias against African Americans or any
27 other ethnic group, nor was there credible evidence that race was a factor in
28

1 Caesar's decision to close the Won door on weekends to promote guest and
2 employee safety.

3 24. Because there was no contractual relationship between defendants
4 and OPM/Poetry, the Caesars defendants had no obligation to provide or permit
5 access to OPM/Poetry patrons through the Won door, or to allow OPM/Poetry to
6 advertise on Caesars Palace property.

7 25. No evidence was presented that the Caesars defendants had any
8 control over or contractual duty to provide air conditioning or valet parking to
9 plaintiffs.

10 26. No evidence was presented that the Forum defendants had any
11 contractual duty to provide air conditioning, valet parking, extra security or
12 advertising to OPM/Poetry.

13 27. When the Won door was closed, Caesars Palace allowed OPM/Poetry
14 patrons alternate access from the forum casino area into The Forum Shops Mall
15 through a service entrance, which patrons entered from the west end of the forum
16 casino near the guest parking structure elevator.

17 28. The Won door was not the only entrance into The Forum Shops Mall
18 available to OPM/Poetry customers. Forum also permitted entry into and exit
19 from The Forum Shops Mall through other service entrances, one of which was
20 nearly adjacent to OPM/Poetry, and two entrances to the mall offering valet
21 parking.

22 29. The closure of the Won door had no effect on Chinois' restaurant
23 business, nor did the evidence show that closure of the door affected
24 OPM/Poetry's business by reducing the number of patrons attracted to
25 OPM/Poetry.

26 30. The closure of the Won door significantly diminished the customer-
27 and security-threatening incidents in and about The Forum Shops, the forum
28 casino and Caesars' guest parking structure areas on and after August 17, 2007.

1 31. The defendants discussed lawful means to evict OPM/Poetry from
2 The Forum Shops Mall, but they did not succeed in doing so. The closure of the
3 Won door only cut off the casual strollers or unruly people who might get into an
4 altercation on Forum Shops or Caesars Palace property. The closure of the Won
5 door was not designed to and did not curb the hard-core patrons who wanted to
6 go to OPM/Poetry.

7 32. OPM/Poetry operated and managed a high-end successful nightclub
8 in Las Vegas during its years of operation from May 2003 through July 2009, when
9 it closed because its lessor, Chinois, ceased doing business and declared
10 bankruptcy.

11 33. There is no credible evidence that efforts of the defendants adversely
12 affected patronage of OPM/Poetry. One Metropolitan Police Department
13 witness testified that on the night of the first undercover operation in 2008, nearly
14 a year after the Won door began to close at 1 a.m., the club was very busy, with
15 75-100 people waiting in line to gain admittance. Evidence derived from
16 OPM/Poetry's expert Bryan Bass was to the effect that OPM/Poetry was
17 successful in Las Vegas for five years prior to closing in 2009 because of its
18 operating efficiency in a highly competitive and challenging economic
19 environment, even after the closure of the Won door.

20 34. Evidence was presented by the plaintiffs that OPM/Poetry won a
21 *Nightclub & Bar* Editor's award in 2009 because it was one of the top 100 nightclubs
22 in the country based on revenue, two years after the Won door began closing at 1
23 a.m. on weekends.

24 35. Pure nightclub, which is located inside Caesars Palace between its
25 sports book and main valet did not cause the violence in The Forum Shops Mall,
26 the forum casino or Caesars guest parking garage that resulted in Caesars closing
27 the Won door on weekend nights. Pure remained open and operating on its
28 normal schedule after the Won door was closed on August 17, 2007. It has

1 continued to operate since OPM/Poetry closed. The evidence shows that
2 violence in The Forum Shops, the forum casino and Caesars guest parking
3 structure greatly abated after the Won door was closed and further decreased
4 following OPM/Poetry's closing in July 2009.

5 36. Pure nightclub and OPM/Poetry nightclub are not similarly situated.
6 While they both presented entertainment and alcoholic beverage service, Pure is
7 much larger, attracts a larger audience than OPM, and is located on Caesars
8 defendants' property, which means the Caesars Defendants control the security
9 outside Pure nightclub. Pure, as a lessee of Caesars Palace, also generates
10 significant income for Caesars, while OPM/Poetry did not.

11 37. Although there is evidence that the Caesars defendants and the Forum
12 defendants worked together to seek OPM/Poetry's lawful removal from The
13 Forum Shops Mall, there is no evidence that these actions were undertaken by
14 unlawful means or were undertaken to further an unlawful purpose.

15 38. There is no credible evidence that plaintiffs suffered damages as a
16 result of the defendants' actions.

17 39. The Won door was controlled by Caesars.

18 40. The Caesars defendants closed the Won door because OPM/Poetry
19 would not pay for the additional security necessary to control pedestrian traffic to
20 and from OPM/Poetry and thereby prevent its patrons from causing and engaging
21 in fights and related physically-threatening incidents in the forum casino and
22 Caesars. The door was not closed as a pretext to mask intentional racial
23 discrimination by the defendants.

24 41. On July 26, 2009, Chinois ceased operations, closed its business and
25 abandoned the leasehold premises.

26 42. On July 29, 2009, Chinois filed a voluntary petition under Chapter 7 of
27 the Bankruptcy Code in the United States Bankruptcy Court for the District of
28 Nevada.

1 43. Nowhere in Chinois' bankruptcy petition or accompanying schedules
2 does Chinois assert that it has any claim against any of the defendants for money
3 damages.

4 44. Chinois does not claim that any defendant was responsible in any way
5 for its closing or its bankruptcy. The defendants had nothing to do with Chinois'
6 decision to cease doing business and close. Chinois admits that it seeks no
7 money damages from the defendants in this action.

8 45. The management agreement between Chinois and OPM/Poetry was
9 terminated by Chinois, under the terms of that agreement, on July 26, 2009 when
10 Chinois closed its business.

11 46. OPM/Poetry ceased doing business and closed because Chinois
12 ceased doing business and abandoned the Premises. The closure of
13 OPM/Poetry's business was not caused by any act or omission of any defendant.

14 47. OPM/Poetry did not have its own liquor or operating licenses and
15 was operating under the licenses held by Chinois.

16 48. OPM/Poetry is not a party to the lease or the lease amendment.

17 49. None of the defendants did anything that caused OPM/Poetry to
18 breach or sever any contractual relationship it had with Chinois. Chinois
19 received all of the rights and benefits to which it was entitled under the
20 management agreement.

21 50. None of the defendants did anything that caused Chinois to breach or
22 sever any contractual relationship it had with OPM/Poetry. OPM/Poetry
23 received all of the rights and benefits to which it was entitled under the
24 management agreement.

25 51. None of the defendants engaged in any act or omission that was the
26 proximate cause of any damages claimed by OPM/Poetry.

27 52. Defendant Forum Shops, LLC voluntarily dismissed its second
28 amended counterclaim.

53. If any finding of fact should more properly be deemed a conclusion of law, it shall be so deemed.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the court reaches the following conclusions of law:

The Claims Asserted by Plaintiffs Against the Caesars Defendants

1. The Caesars defendants decision to close the Won door did not interfere with a contract or contract right of plaintiffs under the management agreement or any other contract in a manner that would support a claim for intentional racial discrimination under 42 U.S.C. § 1981 against the Caesars defendants (plaintiffs' fifth cause of action).

2. No other action of the Caesars defendants interfered with a contract or contract right of plaintiffs in a manner that would support a claim for intentional racial discrimination under 42 U.S.C. § 1981 against the defendants (plaintiffs' fifth cause of action).

3. Plaintiffs have not established a claim for breach of the implied covenant of good faith and fair dealing against Caesars defendants because Caesars is not a party to the management agreement or the Forum lease.

4. Plaintiffs have not produced direct evidence of discrimination sufficient to support a claim for intentional racial discrimination under 42 U.S.C. § 1981 against the Caesars defendants.

5. Plaintiffs have not established a *prima facie* case of discrimination sufficient to support a cause of action for intentional racial discrimination under 42 U.S.C. § 1981 against the Caesars defendants.

6. Plaintiffs do not have a claim for breach of the duty of good faith and fair dealing against the Caesars defendants because they are not and have never

1 been a party to a contract with the Caesars defendants (plaintiffs' eighth cause of
2 action).

3 7. Pure nightclub and OPM/Poetry nightclub are not similarly situated
4 for purposes of disparate treatment analysis under 42 U.S.C. § 1981.

5 8. Café Dela Spiga restaurant and OPM/Poetry nightclub are not
6 similarly situated for purposes of disparate treatment analysis under 42 U.S.C. §
7 1981.

8 9. Plaintiffs have not established "disparate treatment" by the Caesars
9 defendants under 42 U.S.C. § 1981.

10 10. The Caesars defendants did not conspire to unlawfully remove
11 OPM/Poetry from Chinois or to unlawfully diminish its business (plaintiffs'
12 seventh cause of action).

13 11. Plaintiffs have not established that the Caesars defendants' concern for
14 the safety and security of their patrons and employees was a pretext to mask
15 intentional racial discrimination against plaintiffs or their patrons under 42 §
16 U.S.C. 1981.

17 12. Judgment should be entered in favor of the Caesars defendants and
18 against plaintiffs on all claims asserted by them in this action.

19 **The Claims Asserted by Chinois Against the Forum Defendants**

20 13. As a result of the closing of Chinois' business, abandonment of the
21 premises and bankruptcy filing -- none of which had anything to do with any
22 alleged acts or omissions by Forum -- Chinois' claims for declaratory judgment
23 (first) and injunctive relief (fourth) are moot and should be dismissed with
24 prejudice.

25 14. Each of Chinois' remaining causes of action require proof of damages
26 as an essential element. Thomas Kaplan, Chinois' senior managing partner,
27 admitted that Forum did nothing that caused Chinois any monetary injury. He
28 also testified that Chinois is seeking no damages from Forum in this action. This

1 fact is affirmed (1) in the filings Chinois has made with the bankruptcy court
2 which are devoid of any mention of this lawsuit or any claim Chinois may have
3 against Forum and (2) in Chinois' responses to Forum's written discovery requests
4 concerning damages where Chinois provided no information from which any
5 damages to it could be calculated. Because Forum did nothing that caused
6 Chinois to suffer any monetary damages or other legally compensable injury,
7 Forum is entitled to judgment on all of Chinois' remaining causes of action
8 (second, third, fifth, sixth, seventh and eighth).

9 15. When it filed for bankruptcy protection, Chinois had an affirmative
10 duty to disclose to the bankruptcy court all assets, including all contingent and
11 unliquidated claims. This would include the claims asserted in this action against
12 Forum. The schedules filed by Chinois with the bankruptcy court listing all of its
13 assets include no claims -- contingent, unliquidated or otherwise -- against Forum.
14 Accordingly, Chinois is judicially estopped from asserting any claims against
15 Forum in this action.

16 16. The tort of intentional interference with contract (Chinois' second
17 cause of action) requires proof that Forum actually disrupted the contractual
18 relationship to which Chinois was a party by inducing one of the parties to breach.
19 Neither OPM/Poetry nor Chinois has ever asserted that the other breached the
20 management agreement in any way and there is no evidence to suggest that Forum
21 did anything that induced OPM/Poetry or Chinois to breach the contract in any
22 way. As between OPM/Poetry and Chinois, the management agreement
23 remained in full force and effect until it terminated as a matter of course when
24 Chinois ceased doing business, abandoned the leasehold premises and declared
25 bankruptcy.

26 17. Chinois did not establish that Forum intentionally interfered with any
27 contract to which Chinois was a party.

28 18. No action of Forum interfered with a contract or contract right of

1 Chinois in a manner that would support a claim for intentional racial
2 discrimination under 42 U.S.C. § 1981 against the defendants (plaintiffs' fifth
3 cause of action).

4 19. Chinois has not produced direct evidence of discrimination sufficient
5 to support a claim for intentional racial discrimination under 42 U.S.C. § 1981
6 against Forum.

7 20. Chinois has not established a *prima facie* case of discrimination
8 sufficient to support a cause of action for intentional racial discrimination under 42
9 U.S.C. § 1981 against Forum.

10 21. Chinois has not established "disparate treatment" by Forum under 42
11 U.S.C. § 1981.

12 22. Chinois has not established that Forum's concern for the safety and
13 security of its patrons and employees was a pretext to mask intentional racial
14 discrimination against Chinois or its patrons under 42 § U.S.C. 1981.

15 23. With respect to Chinois' sixth (breach of contract) and eighth (breach
16 of implied covenant of good faith and fair dealing) claims, Chinois has failed to
17 meet its evidentiary burden establishing that Chinois was damaged by any act or
18 omission of Forum.

19 24. In Nevada, an actionable civil conspiracy (Chinois' seventh cause of
20 action) consists of a combination of two or more persons who, by some concerted
21 action, intend to accomplish an unlawful objective for the purpose of harming
22 another. Paragraph 98 of the complaint sets forth Chinois' claim for conspiracy:

23 Defendants, and each of them, acted in concert, directly or
24 through common agents, to exert dominion and control over the other
25 defendants, and each of them, and through such dominion and
26 control, furthered the unlawful objectives of (i) improperly invoking
27 remedies under the Lease, including termination of the Lease; (ii)
28 intentionally disrupting the contractual relationships between Chinois
and O.P.M.L.V.; and (iii) improperly disrupting the contractual
relationships between Chinois and O.P.M.L.V., on the one hand, and
actual and prospective patrons of Chinois and O.P.M.L.V. on the
other, all of which has caused and will continue to cause grave
damage to plaintiffs.

1 25. None of the three "unlawful objectives" that form the basis of Chinois'
 2 alleged conspiracy were accomplished. The lease was not terminated by Forum.
 3 It was terminated by Chinois for reasons that had nothing to do with Forum.
 4 Similarly, Forum did nothing that "disrupted" the contractual relationship between
 5 Chinois and OPM/Poetry. That relationship remained fully intact until it
 6 terminated as a matter of course when Chinois terminated the Lease with Forum,
 7 abandoned the leasehold premises and declared bankruptcy. There was no
 8 credible evidence suggesting that Forum interfered with any prospective patrons
 9 of OPM/Poetry.

10 26. With respect to Chinois' conspiracy claim, Chinois failed to meet its
 11 evidentiary burden to show that Forum intended to accomplish an unlawful
 12 objective for the purpose of harming Chinois.

13 27. Forum engaged in no act or omission that was the proximate cause
 14 of any damages suffered by Chinois in this case.

15 28. Judgment should be entered in favor of Forum and against Chinois
 16 on all claims asserted in this action by Chinois.

17 **The Claims Asserted by OPM/Poetry Against the Forum Defendants**

18 29. OPM/Poetry's first (declaratory judgment) and fourth (injunctive
 19 relief) causes of action have been rendered moot by the closing of its business,
 20 which had nothing to do with any alleged acts or omissions by Forum.

21 30. The tort of intentional interference with contract (OPM/Poetry's
 22 second cause of action) requires proof that Forum actually disrupted the
 23 contractual relationship to which OPM/Poetry was a party by inducing one of the
 24 parties to breach. Neither OPM/Poetry nor Chinois has ever asserted that the
 25 other breached the management agreement in any way and there is no evidence to
 26 suggest that Forum did anything that induced OPM/Poetry or Chinois to breach
 27 the contract in any way. As between OPM/Poetry and Chinois, the management
 28 agreement remained in full force and effect until it terminated as a matter of course

1 when Chinois ceased doing business and abandoned the leasehold premises
2 which, in turn, caused OPM/Poetry to cease doing business.

3 31. OPM/Poetry did not establish that Forum intentionally interfered
4 with any contract to which OPM/Poetry was a party.

5 32. No action of Forum interfered with a contract or contract right of
6 OPM/Poetry in a manner that would support a claim for intentional racial
7 discrimination under 42 U.S.C. § 1981 against the defendants (plaintiffs' fifth
8 cause of action).

9 33. OPM/Poetry has not established a claim for breach of the implied
10 covenant of good faith and fair dealing against Forum defendants because the
11 covenant exists by virtue of the lease and OPM/Poetry is not a party to the lease.

12 34. OPM/Poetry has not produced direct evidence of discrimination
13 sufficient to support a claim for intentional racial discrimination under 42 U.S.C.
14 § 1981 against Forum.

15 35. OPM/Poetry has not established a *prima facie* case of discrimination
16 sufficient to support a cause of action for intentional racial discrimination under 42
17 U.S.C. § 1981 against Forum.

18 36. OPM/Poetry has not established "disparate treatment" by Forum
19 under 42 U.S.C. § 1981.

20 37. OPM/Poetry has not established that Forum's concern for the safety
21 and security of its patrons and employees was a pretext to mask intentional racial
22 discrimination against OPM/Poetry or its patrons under 42 § U.S.C. 1981.

23 38. With respect to OPM/Poetry's sixth (breach of contract) and eighth
24 (breach of implied covenant of good faith and fair dealing) claims, OPM/Poetry
25 was not a party to the contract to which these claims pertain -- the lease between
26 Forum and Chinois. OPM/Poetry and Forum are not parties to any contract with
27 one another. There was no privity of contract between Forum and OPM/Poetry
28 and OPM/Poetry has no standing to assert a breach of any provision in the lease

1 (including the implied covenant of good faith and fair dealing).

2 39. With respect to OPM/Poetry's sixth (breach of contract) and eighth
3 (breach of implied covenant of good faith and fair dealing) claims, OPM/Poetry
4 also has failed to meet its evidentiary burden establishing that it was damaged by
5 any act or omission of Forum.

6 40. OPM/Poetry's § 1981 claim for racial discrimination (fifth) is based
7 solely and explicitly on the "benefits or privileges" arising under the lease between
8 Forum and Chinois. OPM/Poetry is not a party to that lease. Because
9 OPM/Poetry is not a party to a contract with Forum, OPM/Poetry cannot assert a
10 claim under § 1981 for racially-motivated loss of or interference with contractual
11 rights. OPM/Poetry lacks standing to bring a § 1981 claim. Accordingly,
12 Forum is entitled to judgment on OPM/Poetry's fifth cause of action.

13 41. Even if OPM/Poetry had standing to assert a claim under 42 U.S.C.
14 § 1981 and could seek damages thereunder for interference with prospective
15 business opportunities, OPM/Poetry failed to meet its evidentiary burden to show
16 that Forum took any action against OPM/Poetry with discriminatory intent.

17 42. In Nevada, an actionable civil conspiracy consists of a combination of
18 two or more persons who, by some concerted action, intend to accomplish an
19 unlawful objective for the purpose of harming another. Paragraph 98 of the
20 Complaint sets forth OPM/Poetry's claim for conspiracy and is set forth above.

21 43. As noted above, none of the three "unlawful objectives" that form the
22 basis of OPM/Poetry's alleged conspiracy (OPM/Poetry's seventh cause of action)
23 were accomplished. OPM/Poetry also failed to meet its evidentiary burden to
24 show that Forum intended to accomplish an unlawful objective for the purpose of
25 harming OPM/Poetry.

26 44. Forum engaged in no act or omission that was the proximate cause of
27 any damages suffered by OPM/Poetry in this case.

28

1 45. Judgment should be entered in favor of Forum and against
2 OPM/Poetry on all claims asserted against Forum in this action by OPM/Poetry.

3 46. If any conclusion of law should more properly be deemed a finding
4 of fact, it shall be so deemed.

5 Submitted by:

6 MORRIS PETERSON

LIONEL SAWYER & COLLINS

7
8 By: /s/Jean-Paul Hendricks
9 Steve Morris, Bar No. 1543
10 Jean-Paul Hendricks, Bar No. 10079
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

By: /s/Charles McCrea
Samuel S. Lionel, Bar No. 1766
Charles H. McCrea, Jr., Bar No. 104
300 South Fourth Street, #170
Las Vegas, Nevada 89101

11 Attorneys for Defendants Caesars
12 Palace Corporation and Caesars Palace
13 Realty Corporation

Attorneys for Defendants
Forum Shops, LLC, Forum Developers
Limited Partnership, Simon Property
Group Limited Partnership, and Simon
Property Group, Inc.

14
15 Let Judgment enter accordingly.

16 DATED and DONE this 24th day of May, 2011.

17
18 
19 U.S. DISTRICT COURT JUDGE